

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION**

Kenneth D. Driggers

Plaintiff,

vs.

Michael J. Astrue, Commissioner  
of Social Security Administration

Defendant.

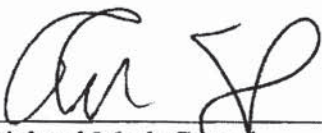
Civil Action No. 4:10-1541-RMG

**ORDER**

This matter comes before the Court on Plaintiff's motion for an award of attorney's fees as a prevailing party in a Social Security disability matter pursuant to 28 U.S.C. § 406(b). (Dkt. No. 35). Plaintiff requests Court approval of \$15,680.50, which represents a contingency fee of 25% of Plaintiff's total recovery. Plaintiff has provided the Court a copy of an attorney's fee agreement which provides that counsel will be paid a fee of 25% of the past due benefits recovered. (Dkt. No. 35-2). Plaintiff's counsel has provided to the Court an accounting of his hours of 24.9 hours. (Dkt. No. 35-4). The Court has previously awarded Plaintiff \$4,104.00 for attorney's fees under the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412. The Government has filed a response indicating it does not object to an award of attorney's fees under 28 U.S.C. § 406(b), but notes correctly that in the event of such an award Plaintiff's counsel would be required to refund to Plaintiff the amount previously awarded under EAJA. (Dkt. No. 36). *See, Astrue v. Ratliff*, 130 S. Ct. 2521, 2528 (2010).

The Court, pursuant to *Gisbrecht v. Barnhart*, 535 U.S. 789, 897-808 (2002), begins this review by determining the fee provided for by the contingency fee agreement and tests this against a standard of reasonableness. The fee requested of \$15,680.50 is in accord with the parties' contingency fee agreement. Based upon various factors normally considered in reviewing the reasonableness of an attorney's fee, the Court finds the fee requested is reasonable. *Barber v. Kimbrell's*, 577 F.2d 216, 226 (4th Cir. 1978). Therefore, the Court hereby approves an attorney's fee of \$15,680.50 pursuant to 42 U.S.C. § 406(b). Upon receipt of payment under § 406(b), Plaintiff's counsel shall refund to Plaintiff the amount of \$4,104.00 previously awarded under EAJA to the extent such fees have actually been received by Plaintiff's counsel.<sup>1</sup>

AND IT IS SO ORDERED.

  
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Richard Mark Gergel  
United States District Judge

Charleston, South Carolina  
August 23, 2012

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<sup>1</sup> Plaintiff's counsel has indicated that he has not yet received the EAJA fees the Court awarded in this matter. (Dkt. No. 35-1 at 2 n. 1). Counsel's obligation to reimburse Plaintiff for the attorney fees awarded under EAJA is, of course, dependent upon the EAJA fees actually being paid to Plaintiff's counsel.